

on a calculation and review of the proceedings, that he had been charged with too much, the excess should be remitted. Indeed they admitted, that there was an excess which had occurred by mistake; which error should certainly be corrected. *Chase* did not then assert, that he owed nothing to *Bryden*; or that, according to the terms of his contract, he could not, at that time, have been legally considered as the debtor of *Bryden*. It was not until some time after, that he objected to a judgment having been rendered, at that time, for either principal or interest, on the ground, that *Bryden* had failed to comply with the contract on his part.

It appears, that the policies of insurance had been regularly transferred by *Bryden* according to the terms of the contract with *Chase*, on the 11th of April, 1812; and that the papers alluded to in the contract of the 26th of March, 1812, were retained by *John Purviance* for some time, and are now filed in this case as exhibits referred to in the answer of *David Hoffman*.

These facts and circumstances have been collected from the bill, answers, exhibits and proofs; they are all that have any material bearing upon the matter now in controversy; other particulars will be noticed in the course of the investigation.

It does not appear, from any thing in these proceedings, what was the nature and extent of *Richard M. Chase's* interest in the property called The Fountain Inn; but it is quite certain that the contract of the 26th of March, 1812, was made between this complainant *Samuel Chase* and *James Bryden* only;—that no other persons were immediately parties thereto. The complainant says in his bill, that he agreed with *Bryden* to purchase of him that property; and in the agreement itself he says, "I agree that on *James Bryden's* delivering to me," &c. Hence it is clear, that, although the assignment and releases were to be made to *Richard M. Chase*, yet when so made they were to be delivered to the complainant *Samuel Chase*. And further, that on *Bryden's* delivering those papers to *Chase* he would give *Bryden*, "good negotiable notes for the sum of \$6000, payable six months thereafter." Whence it is perfectly clear, that the delivery of the specified papers was that act to be done by *Bryden*, which was to bind *Chase* to him unconditionally as his debtor. Consequently, it was the contracting party *Samuel Chase*, alone, who could insist on the performance of it as a condition precedent. It was he alone who could dispense with it as a preliminary act, or waive it altogether. Does it then appear, that this act has been either performed, par-